



41 AF/2674

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Hayes et al.)	Examiner:	Lesperance, J.
)		
Serial No.:	09/611,620)	Art Unit:	2674
)		
Filed:	July 6, 2000)	Attny Doc.:	81230.55US1
)		
Title:	Consumer Electronic)		
	Navigation System And)		
	Methods Related Thereto)		

SUBSTITUTE APPEAL BRIEF

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Dear Sir:

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 49-75 which rejection was set forth in the Office Action mailed March 30, 2004. A timely Notice of Appeal was filed.

This Appeal Brief is being filed in triplicate.

Certificate of Mailing: I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class mail, postage prepaid, in an envelope addressed to: Mail Stop Appeal Briefs – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 16th day of August, 2004.

By: Ranni Matar
Ranni Matar

I. Real Party In Interest

The real party in interest is Universal Electronics Inc.

II. Related Appeals And Interferences

No appeals or interferences are known which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

III. Status Of The Claims

In the application, claims 49-75 remain pending and, having been finally rejected, are the subject of this appeal. Claims 1-48 have been previously cancelled. Appendix I provides a clean, double spaced copy of pending claims 49-75.

IV. Status Of Amendments

The claims are in condition for appeal – no further amendments to the claims are pending.

V. Summary Of The Invention

The claimed invention is directed to a remote control (21) that monitors user input of navigation keys (22) *while* the remote control (21) is being used to transmit navigation commands to an appliance (e.g., commands to navigate a menu of a digital media such as a DVD playable on the appliance), that stores this keystroke data *while* the transmission of navigation commands occurs, and which allows the stored keystroke data to be repeated to thereby *repeat the transmission of the navigation commands to the appliance*. (See, for example, Page 14, line 24-Page 15, line 12; Page 16, line 20-Page 17, line 19; Figs. 3, 5, and 6). The claimed invention further allows for the removal of activations on non-navigation keys, i.e., non-navigation commands, from the stored sequence as well as

the storing and repeating of inter-key pause times, i.e., the time between activations of navigation keys. (See, for example, Page 14, line 24-Page 15, line 8; Page 18, lines 15-25; Page 19, lines 1-18; Figs. 7-9). The claimed invention thus provides the user with the ability to repeat a sequence of transmitted navigation commands *after the fact*, i.e., *after the navigation commands have already been once transmitted to the appliance*. A saved key sequence of navigation commands is transparently saved by the remote control (21) *as the navigation commands are transmitted* by the user of the remote control (21) to the appliance in the first instance.

The claimed invention is also directed to a remote control the receives data from a digital media player. (See, for example, Page 21, line 15-Page 22, line 20). The data is used to define the navigation commands that are transmittable to the digital media player for controlling navigation within the menu system of the digital media player. Again, the claimed invention provides for storing a sequence of the navigation commands for subsequent transmission of those navigation commands to the digital media player.

VI. Issues On Appeal

1. Whether a rejection under 35 U.S.C. § 102 or 35 U.S.C. § 103 can be maintained when the references (alone or in combination) fail to disclose each and every element, considering each and every word, set forth in the claims.

2. Whether a rejection under 35 U.S.C. § 103 can be maintained when the proposed modification of the primary reference would change the principle of operation of the primary reference.

3. Whether a rejection under 35 U.S.C. § 103 can be maintained when the Examiner is relying upon unsupported conclusions regarding the state of the art at the time of the invention.

VII. Grouping Of Claims

For purposes of this appeal, claim 49, 52, 55-62, and 65-72 stand as a single group, claims 50, 53, and 63 stand as a single group, claims 51, 54, and 64 stand as a single group, and claims 73-75 stand as a single group.

Claims 73-75 should be considered to be a separate group since these claims were collectively rejected under grounds which are unique as compared to the remaining claims and, as such, require the consideration of an unique argument as to why claims 73-75 should be considered to be patentable.

Claims 50, 53, and 63 should be considered to be a separate group since these claims were collectively rejected under grounds which are unique as compared to the remaining claims and, as such, require the consideration of an unique argument as to why claims 50, 53, and 63 should be considered to be patentable.

Claims 51, 54, and 64 should be considered to be a separate group since these claims were collectively rejected under grounds which are unique as compared to the remaining claims and, as such, require the consideration of an unique argument as to why claims 51, 54, and 64 should be considered to be patentable.

The reasons that the claim groups are to be considered patentably distinct from one another are reflected in the appropriate portions of the "Argument" section of this Appeal Brief. Presenting the arguments in this manner is in keeping with the example of MPEP § 1206 which describes that, "if claims 1 to 4 are rejected under 35 U.S.C. § 102

and appellant considers claim 4 to be separately patentable from claims 1 to 3, he or she should so state in the 'Grouping of claims' section of the brief, and then give the reasons for separate patentability in the 35 U.S.C. § 102 portion of the 'Argument' section."

Since this exemplary method for providing reasons for grouping the claims has been followed in the subject Appeal Brief, it is respectfully requested that the grouping of the claims be maintained and that the patentability of the claim groups be separately considered.

VIII. Argument

THE REJECTION OF THE CLAIMS

Claims 49-72 stand rejected under 35 U.S.C § 103 as being obvious over U.S. Patent No 6,289,165 ("Abecassis") as modified by the teachings of U.S. Patent No. 6,040,829 ("Croy"). In rejecting claims 49-72, it was generally set forth that Abecassis discloses function keys 212 that provide, for example, subject category selection, content preference selection, and source selection, which has been asserted to correspond to a plurality of navigation keys that are accessible to transmit command codes for commanding the operation of a consumer electronic device to navigate a menu of a digital media playable on the consumer electronic device. While it was acknowledged that Abecassis fails to disclose the claimed storage means for storing a sequence of activations of the keys and means for repeating the stored sequence, it was asserted that Croy, which teaches a save function that allows a user to record a sequence of key activations and associate a name with the sequence to recall a list of programs, discloses a storage means for storing a sequence of activations of the keys as well as a means for repeating the stored sequence. Thus, with respect to the obviousness rejection, it was

concluded that it would have been obvious to modify Abecassis using the teachings of Croy to arrive at the claimed invention “because this would provide automated capabilities for efficiently retrieving and playing only a specified class, category, or subject mater included in segments within the selected video or set of videos as may be available from a database or videos.”

With respect to the rejection of claims 50, 53, and 63, the rejection set forth that the claimed “removing activations of non-navigation keys from the stored sequence” is met by the disclosure in Croy of a “delete” key that “allows removal of a marked program from the list.”

With respect to the rejection of claims 51, 54, and 64, the rejection set forth that the claimed “storing of inter-key pause times” is met by the disclosure in Abecassis of a voice response subsystem.

Claims 73-75 stand rejected under 35 U.S.C. § 102 as being anticipated by Croy. In rejecting claims 73-75, it was asserted that Croy teaches the two-way transmission of data between a base station 100 and a remote control device 100 including a processor connected to the communication system where a marked program may be selected and additional information requested or programmed into a VCR. It was further asserted that a delete softkey allows removal of a marked program from the list if it is not of interest anymore and that this corresponds to the programming operable with the processor and the bi-directional communication system for receiving data from the player used to define navigation commands transmittable to the player for controlling navigation within the menu system and for storing a sequence of the navigation commands for subsequent transmission to the player.

APPLICABLE LAW

It is well settled that an obviousness rejection, like a rejection under 35 U.S.C. § 102, requires that a combination of prior art references disclose each and every element set forth in a claim under consideration. In this regard, each word of a claim must be considered when determining if a claim is anticipated or rendered obvious. Furthermore, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

ABECASSIS DOES NOT DISCLOSE WHAT THE REJECTION ALLEGES IS DISCLOSED BY ABECASSIS

In rejecting claims 49-72, it was asserted that “Abecassis teaches a function keys 212 also provide, for example, subject category selection, content preference selection, and source selection 219 (column 10, lines 14-17) *corresponding to a plurality of keys including navigation keys that are activatable to transmit command codes for commanding the consumer electronic device to navigate a menu of a digital media playable on the consumer electronic device.*” It is submitted, however, that the italicized portion of this assertion finds no support anywhere in the disclosure of Abecassis. In fact, turning to column 10, lines 14-19 of Abecassis, Abecassis states that “pressing one of the i-v keys 212 results in an appropriate new menu of labels and/or icons to be displayed 203.” As can be seen in Fig. 2 of Abecassis, display 203 is quite clearly situated on the remote control, not the media playback device or TV screen, and the possible icons etc. are clearly illustrated at 209. Further, the cited paragraph is the only place in the entire

disclosure of Abecassis that function keys 212 are referenced. Thus, since there is nothing within the four corners of Abecassis that expressly or implicitly teaches that the activation of keys 212 causes the transmission of command codes for commanding the consumer electronic device to navigate a menu of a digital media playable on the consumer electronic device, the obviousness rejection of claims 49-72 cannot be maintained.

CROY AND ABECASSIS IN COMBINATION FAIL TO DISCLOSE EACH AND EVERY CLAIM LIMITATION CONSIDERING EACH AND EVERY WORD

In rejecting claims 49-72 it was not asserted or otherwise mentioned where Croy discloses, teaches, or suggests the expressly claimed automatically storing a sequence of key activations, including navigation keys, when the keys are activated to transmit command codes for commanding the consumer electronic to navigate a menu of a digital media (playable on the consumer electronic device) or the expressly claimed means for repeating the stored sequence of activations of the keys to thereby cause a retransmission of command codes corresponding to those activations of the keys that are within the stored sequence.

That Abecassis fails to disclose, teach, or suggest these claim elements is expressly set forth in the various Office Actions.

While the rejection of claims 49-72 does set forth that Croy teaches a save function and a recall function, the rejection never sets forth that this save function and recall function operates in the claimed manner. The rejection never sets forth that those claim elements that are missing from Abecassis can be found in the express language of Croy.

When discussing Croy, the rejection never sets forth that the Croy save function “automatically stores a sequence of key activations, including navigation keys, when the keys are activated to transmit commands for commanding the consumer electronic device to navigate a menu of a digital media (playable on the consumer electronic device).”

Likewise, the rejection never sets forth that the Croy recall function “causes a retransmission of command codes corresponding to those activations of the keys that are stored within the sequence.”

More specifically, while the rejection asserts that Croy:

teaches a save function that allows a user to record a sequence of user function key activations and associate a name with the particular sequence of actions corresponding to a storage means for storing a sequence of activations of the keys...and the user may simply press “recall” and “Music” to receive a list of programs that meet these particular qualifiers according to the preselected user preferences corresponding to means for repeating the stored sequence.

it is noted that this assertion never states that Croy uses this procedure to transmit and retransmit commands to an appliance, i.e., the word “transmit” does not even appear in this assertion.

The Appellants have respectfully requested on numerous occasions for the Examiner to specify where within Croy it is disclosed that commands are transmitted to an appliance when the user records the sequence of menu navigation keys and where within Croy it is disclosed that commands are retransmitted to an appliance when the “recall” and “music” keys are activated. The Examiner has continued to ignore this request. It is submitted that without the disclosure of these noted elements the combination of Croy and Abecassis cannot be said to meet the requirements for a *prima facie* case of obviousness. Therefore, since the rejection of the claims has not demonstrated where the

combination of Croy and Abecassis discloses each and every word of the claims, it is submitted that the rejection of claims 49-72 must be withdrawn.

CROY SIMPLY DOES NOT DISCLOSE, TEACH, OR SUGGEST SAVING
KEYSTROKE DATA *WHEN KEYS ARE ACTIVATED TO
TRANSMIT COMMANDS TO AN APPLIANCE AND DOES NOT DISCLOSE THE
RETRANSMISSION OF THE KEYSTROKE COMMANDS*

It is further respectfully submitted that the reason that the rejection fails to set forth that the noted claim elements are disclosed within Croy is for the very reason that Croy, like Abecassis, simply fails to disclose the noted claim elements. Croy discloses entering a programming mode whereafter key activations may be monitored and stored to allow a user to navigate a locally stored menu, i.e., a menu that is displayed on the personal navigator itself. When navigating the locally stored menu, the key activations simply do not function to transmit command codes to a consumer appliance.

More particularly, Column 18, lines 33-67 cited to in the rejection of the claims, describes a system that accepts explicit user input to initiate a special programming mode (e.g., selecting the “save” function from a menu as illustrated in Fig. 38) whereupon the user may enter a sequence of user interactions by interacting with the locally displayed menu. (Col. 18, line 49 – Col. 19, line 1 and Figs. 39, 40 and 41). *Croy does not mention nor does Croy infer that commands are transmitted from the remote control to a controlled device while the user is interacting with the locally displayed menu in this programming mode.* Once the sequence is complete, the user assigns a name to the sequence (Col. 19, lines 2-7 and Fig. 42) whereby that sequence can be recalled by selecting a “recall” function and the name of the sequence to be executed (Col. 19, lines 11-16) which, upon execution, causes a program listing to be displayed locally on the remote control (as illustrated in Fig. 46) in accordance with the programmed sequence.

Since this execution of the stored sequence is described and illustrated as only effecting the screen display of the remote control, i.e., the remote control only performs a local operation, it is clear that *Croy does not mention nor does Croy infer that commands are transmitted from the remote control to a controlled device when the user creates and then recalls the stored sequence.*

As noted above, if it cannot be demonstrated where Croy discloses those claim elements that have been acknowledged to be missing from Abecassis, which it does not, the rejection of claims 49 – 72 must be withdrawn.

THE PROPOSED MODIFICATION OF ABECASSIS WOULD IMPERMISSIBLY
CHANGE THE PRINCIPLE OF OPERATION OF ABECASSIS

Abecassis discloses a system that promotes the one-time entry of filtering parameters or playback sequencing for the purpose of storing the parameters within the system (not the remote). Abecassis emphasizes a desire to eliminate any need for the retransmission of parameter editing keystrokes (Col. 24, lines 20-36 which sets forth that the viewer “preestablish[es] ...personalized video content preferences...[such that], during transmission of the video, viewer intervention is not required”). Abecassis describes that a user edits a list of preference parameters which preference parameters, *as opposed to the keystrokes used to define them*, are stored in the system memory (not the remote memory) and automatically applied by the system during playback for the purpose of eliminating the need for further user intervention. (Col. 28, lines 28-33).

Thus, it is submitted that a modification of Abecassis to include a remote control that stores user entered keystroke data while the user transmits commands to an appliance and which allows the user to repeat the stored keystroke data to thereby repeat the transmission of the same, previously transmitted commands to the appliance would be a

modification that is directly contrary to the very principle under which the system of Abecassis is intended to operate, i.e., the express desire of Abecassis to eliminate any need for the retransmission of parameters. Since it is impermissible to propose a modification of a reference that is contrary to its principle of operation, it is submitted that the rejection of claims 49-72 must be withdrawn.

THE EXAMINER HAS FAILED TO CITE TO ANY EVIDENCE TO
CORROBORATE CERTAIN ASSERTIONS MADE IN REJECTING THE CLAIMS

At various times the rejection of claims 49-72 has set forth that “...and any television remote control has the same exact feature where the key pressed is automatically stored in the memory and can be reactivated or repeat or retransmit the next time the consumer electronic device is on” or that “any normal TV remote control has the exact same functionality [of transmitting commands from the remote control to a controlled device while the user is interacting with the locally displayed menu in a programming mode].”

With regard to these assertions, the Appellants have repeatedly submitted that it is not appropriate for the Examiner to take official notice of facts without citing a prior art reference – calling the Examiner’s attention to MPEP § 2144.03. Since the Examiner has failed to place any form of evidence into the record to support the above-noted assertions it is submitted that the rejection of claims 49-72 is improper and must be withdrawn.

It is further respectfully submitted that, to the extent that the Examiner is thinking of the commonly available “recall” or “previous channel” button of a remote control, a remote control having this button does not function “where the key pressed is automatically stored in the memory and can be reactivated or repeat or retransmit the next time the consumer electronic device is on” and does not function to “transmit commands

from the remote control to a controlled device while the user is interacting with the locally displayed menu in a programming mode.” Rather, a remote control having this button does nothing more than transmit a single, fixed command when the “recall” button is activated which single, fixed command *is interpreted by the television* as a command to revert itself to the previous channel. Thus, the operation of this conventional “recall feature” requires that the television save the previously tuned channel and revert to that channel in response to the receipt of the single, fixed command – no command is stored and repeated within the remote control.

SINCE CROY DOES NOT DISCLOSE TRANSMITTING A SEQUENCE OF
COMMANDS TO AN APPLIANCE, CROY CANNOT BE SAID TO DISCLOSE,
TEACH, OR SUGGEST FURTHER CLAIM ELEMENTS RELATED TO THE
TRANSMISSION OF A SEQUENCE OF COMMANDS

The disclosure by Croy of a “delete” key that “allows removal of the marked program from the list” cannot be said to disclose, teach, or suggest the claimed “removing activations of non-navigation keys from the stored sequence” as is set forth in claims 50, 53, and 63. In this regard, the Appellants respectfully question how a “marked program” *in a locally displayed menu* can be said to correspond to a “non-navigation key” which is activated as part of a sequence *used to transmit command codes* to a consumer electronic device for the purpose of navigating a digital media on that consumer electronic device. Since Croy cannot be said to disclose at least the aforementioned claim elements of claims 50, 53, and 63, which claim elements render claims 50, 53, and 63 patentably distinct from the remaining claims, it is submitted that these claims must be deemed to be allowable.

ABECASSIS DOES NOT DISCLOSE STORING INTER-PAUSE KEY TIMES

The Appellants additionally question how the voice response subsystem of Abecassis which accommodates commands such as play and stop – which was cited in the rejection of the claims - can be said to correspond to the claimed means for storing inter-pause key times, i.e., the time between actuations of keys in a sequence. More specifically, the Appellants respectfully submit that a voice response subsystem functions, by definition, to use voice input for the purpose of *eliminating* the actuation of keys and, therefore, inter-key pause times could never even arise for the simple reason that keys are never actuated. Therefore, for the simple reason that Abecassis cannot be said to disclose at least the aforementioned claim elements of claims 51, 54, and 64, which claim elements render claims 51, 54, and 64 patentably distinct from the remaining claims, it is submitted that these claims must be deemed allowable.

CROY CANNOT BE SAID TO ANTICIPATE CLAIMS 73-75

With respect to the separate rejection under 35 U.S.C. § 102 of claims 73-75, it is submitted that this rejection must be withdrawn since Croy fails to disclose the claimed “programming...for receiving data from the player *used to define navigation commands that are transmittable to the player for controlling navigation* within the menu system [of the media player] and for *storing a sequence of the navigation command for subsequent retransmission to the player.*” While the rejection of the claims has asserted that such is disclosed at Col. 19, lines 23 – 27 of Croy, it is noted that the disclosure in this cited passage only describes using a delete soft key to remove a marked program from a list of programs locally displayed in the device. Thus, this disclosure cannot be said to disclose,

teach, or suggest the claimed receiving from a player data used to *define* navigation commands that are *transmittable* to the player for controlling navigation and for storing a sequence of navigation command for subsequent *transmission* to the player. That Croy fails to disclose, teach, suggest, or infer any system or method for *storing a sequence of transmittable navigation commands* has been discussed extensively above. Therefore, since Croy fails to disclose, teach, or suggest each and every element set forth in the claims, which elements render claims 73-75 patentably distinct from the remaining claims, it is respectfully submitted that the rejection of claims 73-75 based upon 35 U.S.C. § 102 is improper and must be removed.

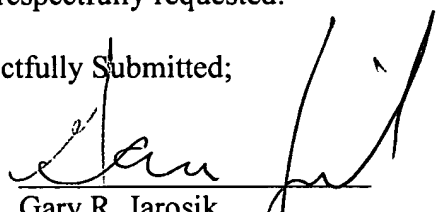
IX. Conclusion

It is respectfully submitted that the application is in good and proper form for allowance. Such action of the part of the Board is respectfully requested.

Date: August 16, 2004

Respectfully Submitted;

By:



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APPENDIX I

49. A remote control operable with a consumer electronic device, the remote control comprising:

a plurality of keys including navigation keys that are activatable to transmit command codes for commanding the consumer electronic device to navigate a menu of a digital media playable on the consumer electronic device;

storage means for monitoring activations of the keys and for automatically storing a sequence of activations of the keys including the navigation keys when used to transmit command codes to navigate the menu of the digital media; and

means for repeating the stored sequence of activations of the keys to thereby cause a retransmission of command codes corresponding to those activations of the keys that are within the stored sequence.

50. The remote control of claim 49, comprising means for removing activations of non-navigation keys from the stored sequence.

51. The remote control of claim 49, wherein the storage means comprises means for storing inter-key pause times.

52. A remote control operable with a consumer electronic system having a consumer electronic device and a removable digital medium operable with the consumer electronic device, the medium including a menu system, the remote control comprising:

a plurality of keys including navigation keys that are activatable to transmit command codes for commanding the consumer electronic device to navigate the menu system;

a transmitter providing communication with the consumer electronic device in response to activation of at least one of the keys;

means for monitoring activations of the keys and for automatically storing a sequence of activations of the keys including the navigation keys when used to transmit command codes to navigate the menu system; and

means for executing at least a subset of the sequence of activations of the keys to thereby cause a retransmission of command codes corresponding to those activations of the keys that are within the subset.

53. The remote control of claim 52, comprising means for removing activations of non-navigation keys from the stored sequence to create the subset of the sequence.

54. The remote control of claim 52, wherein the means for storing the sequence comprises means for storing inter-key pause times.

55. The remote control of claim 52, wherein the means for executing a subset of the sequence is responsive to activation of a single key.

56. The remote control of claim 55, wherein the single key is predetermined.

57. In a remote control having a plurality of keys including navigation keys, a readable medium having instructions for navigating secondary material provided on a removeable digital medium playable on a consumer electronic device, the instructions performing steps comprising:

monitoring user activations of the keys for sensing a sequence of user activations of the keys including the navigation keys when used to transmit command codes for commanding the consumer electronic device to navigate the secondary material of the digital medium;

automatically storing the sequence; and

allowing a user to execute at least a subset of the stored sequence of activations of the keys to thereby cause a retransmission of command codes corresponding to those activations of the keys that are within the subset to command the consumer electronic device to navigate the secondary material of the digital medium.

58. The readable medium of claim 57, wherein the user activations of the keys commands the consumer electronic device to navigate the secondary material to a desired screen and executing the stored sequence commands the consumer electronic device to again navigate to the desired screen.

59. The readable medium of claim 58, wherein executing the stored sequence commands the consumer electronic device to display each screen that was displayed when the sequence of user activations was sensed.

60. The readable medium of claim 58, wherein executing the stored sequence commands the consumer electronic device to display the last screen that was displayed when the sequence of user activations was sensed.

61. The readable medium of claim 57, wherein the instructions further provide for commanding the consumer electronic device to display primary material provided on the removable medium.

62. The readable medium of claim 57, wherein the instructions further provide for controlling operation of the consumer electronic device.

63. The readable medium of claim 57, wherein the instructions further perform the step of removing the activation of non-navigation keys from the sequence to create the subset.

64. The readable medium of claim 57, wherein the instructions further perform the step of storing inter-key pause times.

65. The readable medium of claim 57, wherein the instructions further perform the step of identifying the start and end points of the sequence.

66. The readable medium of claim 57, wherein activation of a single key allows a user to execute the stored sequence.

67. The readable medium of claim 57, wherein the instructions further perform the step of preventing memory overflow.

68. The readable medium of claim 57, wherein the remote control is operable with a digital video disc player and the instructions further perform the step of determining if the remote control is in a DVD mode.

69. The readable medium of claim 68, wherein the instructions further perform the step of placing the remote control in the DVD mode when executing the stored sequence.

70. The readable medium of claim 69, wherein activation of a single key allows a user to execute the stored sequence.

71. The readable medium of claim 57, wherein storing the sequence occurs in response to activating a predetermined key.

72. The readable medium of claim 71, wherein activation of the predetermined key also allows a user to execute the stored sequence.

73. A remote control adapted for use with a media player using a menu system, the remote control comprising:

a bi-directional communication system;

a processor connected to the communication system; and

programming operable with the processor and the bi-directional communication system for receiving data from the player used to define navigation commands that are transmittable to the player for controlling navigation within the menu system and for storing a sequence of the navigation commands for subsequent transmission to the player.

74. The remote control of claim 73, wherein the programming is adapted to process preprogrammed sequences of data transmitted by the player.

75. The remote control of claim 73, wherein the programming is adapted to define a plurality of keys based upon the data received from the player.